In the Supreme Court of the United States
October Term, 1978

No. 78-174

M.W. ZACK METAL COMPANY, Petitioner,

v.

SS SEVERN RIVER, JANSEN & CO.
CONTAM LINIE, and HANS H. JANSEN, Respondents.

REPLY TO RESPONDENT's BRIEF OPPOSING THE GRANT OF A WRIT OF CERTIORARI

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QUESTION PRESENTED

Respondents assert that Petitioner has not complied with Rule 19 and that process in the 1961 suit in the New Jersey District Court could have been served at least since 1958. Both of these statements are incorrect.

I

THE PETITION INVOKED AS REASONS FOR THE GRANT OF IT A CONFLICT BETWEEN CIRCUITS, A DISREGARD OF SETTLED PRINCIPALS OF ADMIRALTY PLEADINGS, AND A DISREGARD OF ADMIRALTY'S EQUITY POWERS, FOR WHICH REASONS THIS HONORABLE COURT HAS JURISDICTION AND THE QUESTIONS ARE OF GREAT CONCERN IN THEIR RESPECTIVE SPHERES OF JURISPRUDENCE.

Two conflicts are raised by the decision below. The first was regarding the operation of Cogsa's time-bar provision 46 USC 1303(6). The decision under review refused to decide as the Second Circuit had in Ore S/S Co. v. Hassel, 137 F.(2) 326, 329, and as the Fourth Circuit had in Int[illegible]o-Rotterdam Inc. v. Tomsen, 218 F.([illegible] Yet, suits had been started against the owner, the charters and the vessel in one court or another in 1961 before the said Statute had become operative.

Furthermore, there is a direct conlict between the Fourth Circuit's decision in M.W. Zack Metal Co. v. International Navigation Corp. of Monrovia 510 F.(2) 451, and

its prior decision, appendix D to this petition, which had acknowledged that Cogsa's time-bar in this case by the filing of the suits in 1961 was inoperative. See Petiton, p. 36.

II

THE LONG ARM STATUTE WAS NOT AVAILABLE FOR SERVICE OF FEDERAL PROCESS.

It was not until Rule 4(f) was amended, effective July 1, 1963, that service of Federal process could be made outside the territorial limitations of the State in which the district court was located, and, not until after July 1, 1966 that process in Admiralty was made to conform to process in a civil suit, the statement of respondent that it was available in 1958 to the contrary notwithstanding. Besides, this suit was already dismissed without prejudice before 1966 and the suit in Germany was being processed, though slowly. Only one recovery could be had. It caused no

prejudice to respondents that the German suit was prosecuted through to judgment and appeals. When those judgments were of the sort that left further prosecution of plaintiff's original claim open, see pp. 42-43 of petition, and as plaintiff has received no payment of the judgment in Germany, it sought to prosecute the litigation that was still pending because its dismissal was not on the merits. Wasn't the denial of that right to proceed, a misapplication of Admiralty's power to favor disposition of suits on the merits, and which, incidentally, require a liberal construction of the Rules of Federal Civil Procedure and of Cogsa's Statute of Limitation.

These misapplications are argued in the petition set before this court as errors in subjects which are worthy of resolution by this court; see Swift & Company Packers et al. v. Compania Columbia del Carribe S.A. et al., 339 U.S. 684,

70 S.Ct. 861, 94 L.ed. 1206.

WHEREFORE, it is respectfully submitted that the questions presented are of application to the equity jurisdiction of Admiralty and presents a conflict of decisions between circuit courts which are repugnant to justice within the Federal Court system, calling upon the Appellate powers of this honorable court to sit in review.

Respectfully submitted,

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